

ASSEMBLY BILL

No. 1889

Introduced by Assembly Member Cedillo

February 10, 2000

An act to add Section 16318 to the Government Code, relating to use of state funds.

LEGISLATIVE COUNSEL'S DIGEST

AB 1889, as introduced, Cedillo. State funds: use to discourage unionization.

Nothing in existing law prohibits recipients of state funds from using the funds to discourage unionization.

This bill would prohibit any employer of more than one person that receives state funds, as defined, from using the funds to discourage unionization by the recipient's employees or any other employees. The bill would also prohibit such an employer that derives revenue from state property through a lease, concession contract, or other agreement from discouraging unionization by his or her employees. The bill would require every contract for the payment of state funds to an employer covered by the bill to contain a covenant that the employer will comply with the bill. The bill would authorize any labor organization or collective bargaining representative to file a complaint with the Labor Commissioner for alleged violation of the bill and would require the Labor Commissioner to conduct a hearing and determine whether, by a preponderance of the evidence, it is likely that the employer has used state funds to discourage unionization. Upon making that finding, the bill would

require the Labor Commissioner to order the employer to keep prescribed records sufficient to show whether the employer has committed further violations of the bill. Employers subject to this recordkeeping requirement would also be required to make specified quarterly reports to the Labor Commissioner and to certify, under penalty of perjury, compliance with the bill's limitations on use of state funds. The bill would authorize the Labor Commissioner to audit the records of employers subject to the bill's recordkeeping and reporting requirements to ensure compliance with the bill. The bill would make any employer ineligible to receive state funds if the employer has been certified by the Labor Commissioner to be in willful or material violation of the bill's recordkeeping or reporting requirements or to have failed or refused to provide records for an audit under the bill, unless and until the Labor Commissioner certifies that the employer is in full compliance. The bill would require the Labor Commissioner to adopt regulations to implement the bill.

The bill would make any employer who knowingly authorizes or permits expenditure of state funds in violation of the bill liable to the state for damages equal to double the amount of the expenditure, plus reasonable attorney's fees and costs. The bill would authorize any taxpayer to bring an action to recover those damages on behalf of the state and would entitle a prevailing taxpayer to his or her attorney's fees.

The bill would make any employer that has been determined by a final judgment of a court to have used state funds in violation of the bill ineligible to receive state funds for a period of 3 years from the date the judgment is entered.

The bill would not apply to payments made before January 1, 2001, to payments for goods or services provided before that date, or to contracts entered into before that date until amended, extended, or renewed. The bill would expressly provide that it does not require disclosure of names of certain private donors to specified nonprofit corporations exempt from federal income taxation.

This bill would not apply to the University of California.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



The people of the State of California do enact as follows:

SECTION 1. Section 16318 is added to the Government Code, to read:

16318. (a) The Legislature finds and declares the following:

(1) It is the policy of the state, declared in Section 923 of the Labor Code, and the policy of the National Labor Relations Act to recognize the right of employees to freedom of association in the workplace and freedom of choice in who will represent employees in collective bargaining.

(2) It is the policy of the state that workers should be free to choose their bargaining representative without interference from the state.

(3) The state currently places no limitation on the use of its funds to discourage unionization and, as a result, state funds have, in fact, been used to discourage unionization.

(4) The expenditure of state funds to support an employer's opposition to unionization of the employer's workers does not serve the purposes for which the state funds were provided to the recipient and, thus, the expenditure of those funds to oppose unionization is a misuse and waste of state funds.

(5) Section 9 of Article IX of the California Constitution precludes applying this section to the University of California.

(b) Therefore, it is the intent of the Legislature in enacting this act to ensure that state funds are not used to discourage employees from choosing union representation.

(c) For purposes of this section:

(1) "Employer" means any individual, government agency or entity, corporation, unincorporated association, partnership, or other legal entity that employs more than one person, but does not include the University of California.

(2) "Receive state funds" means to receive state funds pursuant to a payment to a health care provider, a grant,

1 a competitively bid contract, or reimbursement for
2 services, and also includes receipt by a subcontractor of
3 payment for the performance of services purchased by or
4 funded by the state. A manufacturer only receives state
5 funds in connection with a sale of goods if the goods are
6 manufactured in the state.

7 (3) “State funds” means any money drawn from the
8 State Treasury or any special or trust fund of the state, and
9 any state resources, in the form of goods or services, that
10 are provided to any employer. “State funds” also means
11 the value of those goods and services. “State funds”
12 includes revenues or other funds received by a party to
13 a concession contract with the state from any third party
14 pursuant to that contract.

15 (4) “Unionization” means organization of employees
16 for the purpose of collective bargaining.

17 (5) A recipient of state funds is deemed to use the state
18 funds by applying the funds to operating expenses, such
19 as employee compensation, supplies, maintenance, or
20 utilities, or by applying the funds to capital facilities or
21 equipment.

22 (6) A use of state funds shall be deemed for the
23 purpose of discouraging unionization if it directly or
24 indirectly supports or is in furtherance of (A) any
25 communication in any form that advocates or directly or
26 by implication suggests that employees should vote
27 against representation by a union for purposes of
28 collective bargaining, (B) hiring or consulting legal
29 counsel or other consultants to advise on how to deter
30 unionization or how to impede a labor organization that
31 represents employees from fulfilling its representation
32 responsibilities, (C) holding meetings to influence
33 employees not to join or form a labor organization for the
34 purpose of collective bargaining, or (D) planning or
35 conducting activities by employer supervisors to deter
36 the activities of a labor organization.

37 (d) (1) No employer who receives state funds shall
38 use, either directly or indirectly, those funds in whole or
39 in part to discourage unionization by that employer’s
40 employees or any other employees. No employer who

1 derives revenue from property owned by the state and
2 used by that employer through lease, concession contract,
3 or other agreement shall discourage unionization by his
4 or her employees who are employed on or in relation to
5 that state property.

6 (2) Nothing in this section limits the right of
7 individuals who are not supervisors, managers,
8 consultants, attorneys, advisers, or contractors of a
9 recipient of state funds to advocate for or against
10 unionization in the facilities of the recipient to the extent
11 not precluded by applicable law.

12 (3) Nothing in this section limits the right of any
13 employer or union to engage in lawful activities relating
14 to the negotiation and enforcement of a collective
15 bargaining agreement.

16 (4) Every contract for the payment of state funds to an
17 employer shall contain a covenant that the employer will
18 comply with this section.

19 (e) For purposes of this section, each recipient of state
20 funds shall account for the state funds in accordance with
21 the following:

22 (1) State funds designated by the state for use for, or
23 to reimburse, a specific expenditure of the recipient shall
24 be accounted for as being allocated to that expenditure.

25 (2) State funds that are not so designated shall be
26 allocated on a pro rata basis to all expenditures of the
27 recipient that support or are related to the purpose for
28 which the state funds are received.

29 (f) The Labor Commissioner shall adopt regulations to
30 implement the requirements of this section.

31 (g) (1) A labor organization or collective bargaining
32 representative at any time may file a complaint with the
33 Labor Commissioner alleging that an employer that has
34 a contract with the state is in violation of paragraph (1)
35 of subdivision (d).

36 (2) Within 30 days of receiving a complaint under
37 paragraph (1), the Labor Commissioner shall conduct a
38 hearing to determine whether the alleged violation has
39 occurred.

1 (3) The Labor Commissioner shall make a
2 determination and render a decision within 10 days
3 following conclusion of the hearing.

4 (4) If the Labor Commissioner determines, by a
5 preponderance of the evidence, that it appears likely that
6 the employer has violated paragraph (1) of subdivision
7 (d), the Labor Commissioner shall order the employer
8 thereafter to keep accurate and complete records of the
9 employer's expenditures of all state funds received by the
10 employer. The records shall be sufficient to show whether
11 the employer has used state funds to discourage
12 unionization.

13 (5) Each employer subject to the recordkeeping
14 requirements of paragraph (4) during a calendar quarter
15 shall prepare and submit to the Labor Commissioner,
16 within 30 days following the end of the quarter, a report
17 specifying each expenditure of state funds and each
18 expenditure of funds to discourage unionization made by
19 the employer during that quarter.

20 (6) The report required by paragraph (5) shall include
21 a statement that the representations made are true,
22 correct, and contain no material omissions of fact to the
23 best knowledge and belief of the employer submitting
24 the certification. A violation of this paragraph is a
25 misdemeanor.

26 (7) The Labor Commissioner, on his or her own
27 initiative or in response to a complaint the Labor
28 Commissioner deems credible, may at any time audit the
29 records of an employer subject to the requirements of this
30 subdivision to ensure compliance with this section.

31 (8) Following a certification by the Labor
32 Commissioner that any employer has willfully or
33 materially failed to comply with the recordkeeping
34 requirements of paragraph (4) or the reporting
35 requirements of paragraph (5), or has failed or refused to
36 promptly provide the Labor Commissioner or his or her
37 designated representative access to the employer's
38 records for the purpose of conducting an audit pursuant
39 to paragraph (7), the person shall be ineligible to receive
40 state funds until the Labor Commissioner certifies that

1 the employer is in full compliance with those
2 requirements.

3 (h) (1) Any employer who knowingly authorizes or
4 permits an expenditure of state funds in violation of this
5 section shall be liable to the state for civil damages equal
6 to twice the amount of the expenditure, plus reasonable
7 attorney's fees and costs. Any taxpayer may bring an
8 action to recover these civil damages on behalf of the
9 state, provided that both of the following conditions exist:

10 (A) The taxpayer has first served a copy of the
11 complaint on the Attorney General with a written
12 disclosure of substantially all material evidence and
13 information the taxpayer possesses.

14 (B) The Attorney General has either notified the
15 taxpayer that the Attorney General has agreed to bring
16 an action to recover funds expended in violation of this
17 section or, after 30 days, the Attorney General has failed
18 to agree to bring an action to recover the funds expended
19 in violation of this section.

20 (2) If the Attorney General agrees to bring an action
21 to recover the funds expended in violation of this section,
22 the action shall be brought within 60 days of notifying the
23 taxpayer of the intent of the Attorney General to do so,
24 and the taxpayer may intervene in the action.

25 (3) In any action brought under paragraph (1), all of
26 the following apply:

27 (A) The Attorney General may intervene in any
28 action brought by a taxpayer at any time.

29 (B) The action may be dismissed only if the court and
30 the Attorney General give written consent to the
31 dismissal and their reasons for that consent.

32 (C) The Attorney General shall have the primary
33 responsibility for prosecuting any action that the
34 Attorney General initiates or in which he or she
35 intervenes, and shall not be bound by an act of the person
36 bringing the action.

37 (D) The Attorney General may dismiss the action
38 notwithstanding the objections of the taxpayer initiating
39 the action if the taxpayer has been notified by the
40 Attorney General of the filing of the motion and the court

1 has provided the person with an opportunity for a hearing
2 on the motion.

3 (E) The Attorney General may settle the action with
4 the defendant notwithstanding the objections of the
5 taxpayer initiating the action if the court determines,
6 after a hearing, that the proposed settlement is fair,
7 adequate, and reasonable under all the circumstances.

8 (F) Upon a showing by the Attorney General or a
9 defendant that unrestricted participation during the
10 course of the litigation by the taxpayer initiating the
11 action would interfere with or unduly delay the
12 prosecution of the case, or would be repetitious,
13 irrelevant, or for purposes of harassment, the court may,
14 in its discretion, impose appropriate limitations on the
15 taxpayer's participation.

16 (4) In any action brought under paragraph (1) in
17 which the defendant is found to have violated this section,
18 the taxpayer shall recover as part of the judgment his or
19 her reasonable attorney's fees and costs.

20 (5) A final judgment of a court of competent
21 jurisdiction holding that an employer has violated
22 paragraph (1) of subdivision (d) is a ground for
23 debarment of state funds for three years from the date the
24 judgment is entered.

25 (i) This section does not apply to state funds received
26 by an employer (1) prior to January 1, 2001, (2) in
27 consideration of goods supplied or services rendered
28 prior to January 1, 2001, or (3) under a state contract
29 entered into prior to January 1, 2001, until that contract
30 is extended, renewed, or amended on or after January 1,
31 2001.

32 (j) Nothing in this section shall be construed to require
33 an employer that is a nonprofit corporation exempt from
34 federal income taxation under Section 501(c)(3) of the
35 federal Internal Revenue Code (26 U.S.C. Sec.
36 501(c)(3)) to disclose the names of private donors of
37 donations that are lawfully deductible from federal
38 income tax payable by the private donors.

39 (k) The provisions of this section are severable. If any
40 provision of this section or its application is held invalid,

1 that invalidity shall not affect any other provision or
2 application that can be given effect without the invalid
3 provision or application.

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